

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,  
Plaintiffs  
and  
United States of America,  
Plaintiff-Intervenor,  
v.  
Tucson Unified School District, et al.,  
Defendants,

No. CV-74-00090-TUC-DCB  
(Lead Case)

Maria Mendoza, et al.,  
Plaintiffs,  
and  
United States of America,  
Plaintiff-Intervenor,  
v.  
Tucson Unified School District, et al.  
Defendants.

No. CV-74-0204-TUC-DCB  
(Consolidated Case)

**ORDER**

Post Unitary Status Reporting and Accountability Plan Adopted, pending revision, and  
Granting Unitary Status, accordingly.

1 On April 19, 2021, the Court found the District attained unitary status in part under  
2 the USP, with exceptions including the creation of a post-unitary status plan, pursuant to  
3 Section X, Accountability and Transparency, of the USP. The Court ordered the District to  
4 develop a Post Unitary Status Reporting Plan (PUSRP) to: (1) identify benchmark events  
5 scheduled to occur after April 19, 2021; (2) ensure practices of transparency and  
6 accountability, including posting information on the District’s website; and (3) continue  
7 District Annual Reports (“DARs”) for a “reasonable period of time to facilitate public  
8 accountability and transition of oversight” of USP operations to the Governing Board.  
9 (Reply (Doc. 2632) at 2 (citing Order: Findings of Fact; Conclusions of Law (FF&CL)  
10 (Doc. 2572) at 19, 55 (FF ¶ 45; CL ¶ 2)).

11 On May 19, 2021, the District filed its Notice of Compliance Regarding Unitary  
12 Status Plan (Doc. 2583) and attached the Post Unitary Status Plan (Doc. 2583-1), which  
13 the Court found met the Court’s directives for post unitary status transparency but ignored  
14 post unitary status accountability. (Order (Doc. 2610) at 8 (noting PUSRP failed to even  
15 mention “accountability” and instead addressed only transparency).<sup>1</sup> Accordingly, on  
16 October 6, 2021, the Court ordered the District to revise the PUSRP. That revision was  
17 filed on January 10, 2022. (Doc. 2621-1)).

18 The Mendoza Plaintiffs filed an Objection, which submits the revised PUSRP, now  
19 renamed the Post Unitary Status Reporting and Accountability Plan (PUSRAP) falls short  
20 of providing clarity and transparency necessary to ensure public accountability post unitary  
21

---

22 <sup>1</sup> Also, on July 7, 2021, the Court resolved a dispute between the District and the  
23 Special Master as to the format for the PUSRP, siding with the District. The Court,  
24 however, agreed with the Special Master that post unitary status the public may need more  
25 narrative providing background information regarding the USP and its program  
26 components. The Court directed that “requisite background shall be provided by posting  
27 the Executive Summary, with an Update: Post Unitary Status Executive Summary on the  
28 webpage where the Annual Reports are posted.” (Order (Doc. 2588) at 8.) The Court also  
directed the District to use the narrative sections in the Annual Reports to expressly  
“address the requisite information suggested by the Special Master by identifying relevant  
ongoing initiatives in diversity, equity and inclusion, including the costs of those  
initiatives”; the DAR USP “section narratives, post unitary status, shall address any  
changes made in the policies or practices affecting the major goals of these USP  
provisions.” *Id.*

1 status. (Mendoza Objection (Doc. 2628)). The Mendoza Plaintiffs complain that the  
2 PUSRAP references documents which have not yet been created. Specifically, the  
3 Performance Impact Assessment (PIA) document has not been developed and is not  
4 included as an attachment to the PUSRAP. The revised supporting budget materials are  
5 missing the narrative explanations to guide the public in understanding the 910G budgets  
6 and includes only references to the previously approved budget processes, forms, and  
7 timelines. Without easy access to this background information, the public will find it  
8 difficult to meaningfully review future proposed 910G budgets. *Id.*

9 The Mendoza Plaintiffs want time to review a copy of the Executive Summary and  
10 the Update; they generally complain that the District's website obscures the  
11 interconnectedness between current operations and the USP. They complain that it is not  
12 clear how long the PUSRAP will be in effect, and the public notice and hearing provisions  
13 are inadequate because they lack specifics for how and when notice will be given to the  
14 public and hearings will be held before the Governing Board. *Id.*

15 The Mendoza Plaintiffs ask the Court to retain jurisdiction over this case because  
16 the District has not yet shown a commitment and capacity to be released from judicial  
17 oversight. They charge that the District failed to comply with the PUSRAP's Benchmark  
18 Event Schedule, which included 2021 updates to the MASSD and AASSD Operating  
19 Plans, because the updates were not presented to the community and Governing Board.  
20 *See* (Objection (Doc. 2628) at 19 (quoting Order (2508) at 15) (instructing District to  
21 update plans for presentation to "the superintendent, governing board and community"  
22 either at the end of SY 2020-21 or the beginning of SY 2021-22, whichever deadline  
23 coincides with this year's annual . . . review.'"))

24 Alternatively, the Mendoza Plaintiffs ask the Court to sustain their objections to the  
25 PUSRAP and direct the preparation of a revised PUSRAP that addresses the matters set  
26 forth in the Objection and fully complies with the Court's Orders.

27 The District revised the PUSRAP, *sua sponte*, to address the Mendoza Plaintiffs'  
28 Objections. (Reply, PUSRAP (Doc. 2632-1) at 2-6.) This time, the District included all

1 the supporting documentation for PUSRAP, as follows: Exhibit A: Benchmark Events  
2 Schedule; Exhibit B: form PIA; Exhibit C: DIA example; Exhibit D: exemplar budget  
3 forms; Exhibit E: exemplar budget development forms; Exhibit F: budget expert's budget  
4 principles. There has been no further objection or request from Plaintiffs for additional  
5 briefing, and the Court finds no need for it. The Court has reviewed the revised PUSRAP  
6 and finds the revisions have been limited to the issues raised in the Mendoza Objection.  
7 There are no new issues. The Court, therefore, proceeds to determine whether the  
8 PUSRAP, as revised February 22, 2022, complies with the Court's prior directives  
9 related to Section X, Accountability and Transparency, of the USP.

#### 10 DISCUSSION

11 The Mendoza Plaintiffs are correct that the revised PUSRAP promises to prepare  
12 the budget form narratives and Updated Executive Summary, both to be posted with the  
13 PUSRAP, when approved. That time has come. The Court approves the PUSRAP,  
14 pending the revisions explained below. *See* (PUSRAP, inclusive of Exhibit Index and  
15 attached exhibits (Doc. 2632-1) at 5-244).

16 With the exception of the narratives to accompany the budget forms and the  
17 Executive Summary and Post Unitary Status Update to the Executive Summary, all the  
18 supporting documents referenced in the PUSRAP are attached. The Executive Summary  
19 (Doc. 2384) was filed by the District on December 1, 2019. The Executive Summary was  
20 prepared at the request of the Court to "give a broad overview of [program] efforts under  
21 the USP [and] to give an understanding of how they fit together." (Exec. Summary (Doc.  
22 2384) at 2.) The Executive Summary shall be posted on the Deseg. Opening Page of the  
23 District's dedicated webpage for the District's programs under the USP and any other  
24 equity, diversity, and inclusion programs: Unitary Status and Desegregation (the Deseg.  
25 webpage).<sup>2</sup> (PUSRAP (Doc. 2632-1) at 5 § II.D.1.) The link to the Executive Summary

---

26  
27  
28 <sup>2</sup> <http://deseg.tusd1.org>

1 shall be immediately posted there just below the link to the USP. The update shall be  
2 added there too.

3 As for the budget form narratives, the District proposes to finalize them during this  
4 budget cycle which runs from now through May and to give them to the Plaintiffs for  
5 review and comment. Thereafter, the narratives shall be added to the budget material  
6 forms. The Court tends to agree with the District's view that "less is more" and,  
7 therefore, the supporting budget criteria forms, student support forms, enrollment  
8 projections, and District budget formulas for allocating funding, including corresponding  
9 narratives, need only be referenced in the annual budget notice and posted on the TUSD  
10 Deseg. Budget webpage, accordingly. *See* (PUSRAP (Doc. 2632-1) at 5 § II.D.3.)  
11 Likewise, any changes to the budget forms responsive to the recently adopted Budget  
12 Expert's Budget Principles shall be completed first so the narrative will include  
13 explanations of any responsive changes in the forms.

14 The PUSRAP now makes it clear that the annual opportunity for public review of  
15 its ongoing USP related operations, including a public hearing, shall commence with  
16 publication of the DAR in November followed by a public hearing in January. (PUSRAP  
17 (Doc. 2632-1) at 3 § II.A.3.) The annual report, Examination of Desegregation  
18 Expenditures, prepared by the outside accounting firm will be posted on the Budget page  
19 of the Deseg. website by February 15 of each year. *Id.* at 5 § II.C.3.) Public review of the  
20 910G Budget will begin with notices issued by May 15 or within 5 days of when the  
21 Arizona Legislature finalizes its budget, if not finalized by May 1. (PUSRAP (Doc. 2632-  
22 1) at 4 § II.C.1.) The District shall similarly clarify the PUSRAP § C.1.e , "before  
23 considered for adoption" by adding: "The Governing Board must adopt the annual budget  
24 by the end of June."

25 The PUSRAP now expressly states it "shall remain in effect beyond the date that  
26 is three years following termination of court supervision" and will terminate after a  
27 hearing before the Governing Board to determine "whether and to what extent the  
28

1 provisions of this Plan [PUSRAP] shall remain in effect beyond” three years. (PUSRAP  
2 (Doc. 2632-1) at 6 § II.E.)<sup>3</sup>

3 The Court agrees with the District that notice be given by posting it on the  
4 website. A “Public Notice” tab should be added to the Deseg. Opening Page. The  
5 PUSRAP § II.D.1, Opening Page shall be revised accordingly. All documents required  
6 under the PUSRAP to be published shall be posted as a Public Notice. Additionally, all  
7 Public Notices shall be copied to each member of the Governing Board, which is  
8 comprised of the elected officials charged to represent the needs of TUSD’s schools and  
9 students. The notice provisions in the PUSRAP shall be accordingly revised. With time  
10 the significance of the USP and use of buzzwords like unitary status will fade in memory,  
11 therefore, the Deseg. webpage, which serves as the means for notice to be given to the  
12 community, shall be cross-linked between the webpages for MASSD and AASSD and  
13 the Equity Department. A link to the Deseg. Opening page shall remain on the TUSD  
14 website Home page.

15 This brings the Court to the task of reviewing and considering the sufficiency of  
16 the Performance Impact Analysis (PIA) form, which the Court ordered the district to use  
17 for assessing the impact of District Alternative Education Program (DAEP) program  
18 changes. (Order (Doc. 2634)). The Court’s directives for preparation of a PIA for DAEP  
19 has likely been a spoiler alert to the finding the Court makes now rejecting the PIA as  
20 proposed and attached to the PUSRAP, Ex. B (Doc. 2632-1) at 11. The Court ordered the  
21 District to prepare a PIA because “[t]hese program changes may impact program  
22 effectiveness of a substantive USP provision and, therefore, require the District to  
23 conduct a Performance Impact Analysis (PIA) to determine that to the extent practicable  
24 the changes address racial segregation and improve academic performance and quality of  
25 education for Latino and African American students, including EL students.” (Order  
26 (Doc. 2634) at 11).

---

27  
28 <sup>3</sup> The PUSRAP contains a typo reflecting subsection, Term of this Plan, as D, but it  
should be subsection E.

1 This is a far different standard than that proposed by the District, which is to  
2 prepare a PIA when substantive changes are made to USP programs. *See* (PUSRAP, Ex.  
3 B: PIA (requiring PIA for “Any Material Change to a USP-Related Program or  
4 Activity”). The District relies on the Court’s directive to “develop and adopt a PIA to  
5 reflect substantive USP program changes . . . .” (Reply (Doc. 2632) at 4 n.2.) The Court  
6 used the adjective “substantive” to modify “USP program” not “changes.” The threshold  
7 inquiry is whether there is a change being made to a substantive USP program, such as  
8 DAEP. The PIA is used to conduct the remaining inquiry into the merits of the change.  
9 The PIA assesses whether impacts from a proposed change in to a substantive USP  
10 program are substantial and, if so whether any measures can be taken to mitigate negative  
11 impacts.

12 The Court instructed the District to pattern its development and use of the PIA on  
13 the DIAs, which have been successfully used by all parties and this Court through the  
14 duration of the case. *See* (USP § X.C.2 (Doc. 1713) at 59) (“ . . . a Desegregation Impact  
15 Analysis (“DIA”) [] will assess the impact of the requested action on the District’s  
16 obligation to desegregate and shall specifically address how the proposed change will  
17 impact the District’s obligations under this Order [the USP]”). Under this standard, the  
18 District would have prepared a PIA for the change that resulted in the Desegregation  
19 Department becoming the Equity, Diversity, and Inclusiveness (EDI) Department, which  
20 the Mendoza Plaintiffs described as eliminating the Desegregation Department and the  
21 District described as a title change. Comparatively, under the District’s standard neither  
22 the EDI nor DAEP changes warranted a PIA. This reflects the flaw in the District’s  
23 approach. The threshold for triggering review cannot turn on the conclusion regarding the  
24 substantiality of the program change.

25 While the Court has required the District to prepare a PIA for the DAEP, (Order  
26 (Doc. 2634), it does not require a PIA for the EDI changes. The District is correct: “If [it]  
27 had done a PIA [for the EDI change], it would have had the same information set out in  
28 [the Reply], showing positive impacts.” (Reply (Doc. 2632) at 8.) Briefing related to the

1 SY 2021-22 budget and the PUSRAP related to the EDI change reflects that the District  
2 can compile the type of data and information needed to complete a PIA.

3 The PIA shall be revised to reflect the same threshold standard for triggering  
4 review, which the Court described herein and in the DAEP Order (Doc. 2634).

5 As to its format, the District's proposed PIA is far different from the DIA.  
6 According to the District: "A form PIA is a different story. While a DIA is a formulaic,  
7 standard form that has been used in the past, the content and organization of a  
8 performance impact analysis for a proposed change in a program is likely to vary  
9 substantially, depending on the nature of the change and of the program itself. Thus,  
10 creating a "form" PIA would not appear to be helpful — the most such a form could  
11 realistically include would be fields to 'describe the change,' 'describe the impact of the  
12 change,' and 'describe the rationale for the change.'" (Reply (Doc. 2632) at 4-5.)  
13 "However, in the interest of cooperation, the District has created such a form and  
14 attached it to the revised PUSRAP submitted [] as Exhibit A." *Id.* at 5.

15 The Court is not convinced that the PIA cannot and need not track the DIA. For  
16 example, the first three provisions in the DIA track perfectly for a PIA: Action; Issues,  
17 and Objectives. *See* (PUSRAP, Ex. C: DIA (Doc. 2632-1) at 13.) Facility Background  
18 would track for a PIA as: USP Program Background. *Id.* at 14. The District is correct that  
19 the Impact Analysis section will include different factors for assessing program  
20 performance, but the very essence of the USP has been to require the District to establish  
21 such measures of effectiveness. *See e.g.* (Order (Doc. 2636) ordering discussing  
22 measurers of effectiveness for magnet schools). Even if the factors for assessing program  
23 performance for student achievement are more nuanced than those determining impacts  
24 to integration, a check list of factors can be developed based on the goals of the various  
25 USP programs designed to improve student achievement. (PUSRAP, Ex. C: DIA (Doc.  
26 2632-1) at 14.)

27 Importantly, the last three sections of the DIA, Impact Analysis, track perfectly for  
28 assessing changes to USP programs for both integration and student achievement. Section



1 D, “Analysis of how the proposed change will impact District obligations under the USP”  
2 looks at Compliance, Student Assignment, Transportation, Administration/Certified  
3 Staff, Quality of Education, Discipline, Family and Community Engagement, Extra-  
4 Curricular Activities, and Facilities and Technology. These Impact Analysis factors  
5 reflect the USP’s design to address the elements outlined in *Green v. Kent*  
6 *County School Board*, 391 U.S. 430 (1968) to attain unitary status. The DIA did not  
7 single out only some as relevant to integration. As inclusion of all these factors in the  
8 DIA reflects, the USP is an across-the-board interconnected plan to attain integration and  
9 improve student achievement. This section is as relevant for a PIA as it is for a DIA.  
10 Section E, “Data Sources” should add “Research Based Sources, which are especially  
11 important when considering potential effectiveness related to student achievement  
12 programs. Finally, Section F, “Assumptions” equally reflects presentation of a conclusion  
13 drawn pursuant to either a PIA or DIA. (PUSRAP, Ex. C: DIA (Doc. 2632-1) at 22-25.)

14 In the same way the DIA has been submitted to this Court for review and  
15 consideration of any objections, the DIA and PIAs shall be subject to public notice under  
16 the PUSRAP, including copies of all PIA and DIAs being sent to the members of the  
17 Governing Board. The PUSRAP, USP Program Changes § II.B and District Website §  
18 II.D need to be revised, accordingly. The Court leaves it to the Governing Board’s  
19 discretion to call for further briefing or a public hearing related to future PIAs or DIAs.

20 The District shall revise the PIA to track the DIA both for its standard of review  
21 and its format. For the “Impact Analysis” section, the District shall identify the types of  
22 performance measures relevant for assessing the effectiveness of USP programs targeting  
23 student achievement. The District shall submit this section to the Implementation  
24 Committee (IC) for its review and comment and make any revisions before presenting  
25 both the PIA and the IC comments to the Court for approval.

26 Subsequent to the revisions being made to the PUSRAP, including the  
27 development of the PIA, the Court adopts it. The District shall now move forward with  
28 any budget form revisions responsive to the recently adopted Budget Expert’s Budget

1 Principles and complete the budget narratives within this budget cycle: June. The District  
2 shall immediately post the Executive Summary and the Update as soon as it is completed,  
3 but not later than June. The Smylie Protocol adjustments will be implemented by then  
4 too.

5 The Court finds that the District has attained unitary status, pending the revisions  
6 to the PUSRAP, including the PIA. The Court rejects the Mendoza Plaintiffs argument  
7 that the District’s failure to comply with the Benchmark Events Schedule calls “into  
8 question the District’s commitment and/or capacity to perform its obligations once this  
9 Court’s oversight is terminated – and whether such oversight should be terminated.”  
10 (Mendoza Obj. (Doc. 2628) at 19.) For example, the Plaintiffs challenge the updates  
11 required for the MASSD and AASSD Operating Plans, which were approved contingent  
12 on being updated. *Id.* (citing (Order dated August 14, 2020 (Doc. 2508) at 15 (instructing  
13 “Director of MASSD shall present the updated MASSD Operating Plan in his ‘regular  
14 update to the superintendent, governing board, and community’ either at the end of SY  
15 2020-21 or the beginning of SY 2021-22, whichever deadline coincides with this year’s  
16 annual...review.”)

17 Specifically, the Mendoza Plaintiffs allege that in August the District reported that  
18 “[t]he plans are nearly complete and will be presented to the community and the  
19 Governing Board next month [that is, September 2021].” (Mendoza Obj. (Doc. 2628) at  
20 19) (quoting Reply (Doc. 2604) at 10.) After Plaintiffs received TUSD’s Supplemental  
21 PUSRAP, they again inquired regarding the status of events on the Benchmark Schedule  
22 and were told staff believed the updated AASSD and MASSD Operating Plans had been  
23 presented to the Governing Board, but upon further inquiry it became apparent that the  
24 presentation to the Board had not occurred. Having this oversight brought to its attention,  
25 the District’s Superintendent immediately sent the two updated operating plans to the  
26 Governing Board.

27 The Mendoza Plaintiffs complain that the Updated AASSD and MASSD  
28 Operating Plans were never presented to the community because they are not posted on

1 the AASSD and MASSD websites, but they are posted on the Deseg. webpage where all  
2 the USP program plans are located.<sup>4</sup> More importantly, the Updated AASSD and  
3 MASSD Operating Plans were included in the 2020-21 DAR. (2020-21 DAR,  
4 Appendices 92 (AASSD) and 93 (MASSD)). The DAR was filed with the Court on  
5 November 1, 2021. The Mendoza Plaintiffs complain: “This is not sufficient and does not  
6 constitute compliance with the Court’s order. There simply is no way in which inclusion  
7 of the updated Plans among hundreds of documents appended to the Annual Report and  
8 an otherwise unannounced posting to a busy section of the TUSD website can be  
9 understood to be updates by a Department Director to the Governing Board and the  
10 community.” (Mendoza Objection (Doc. 2628) at 20.) The Plaintiffs can’t have it both  
11 ways, with the annual DAR serving as a comprehensive repository for all things USP and  
12 simultaneously serving the interests of brevity. The annual DARs have provided for  
13 effective review of USP programs every year since the inception of this case; the District  
14 has been ordered to continue them as they have been historically used in this case. *See*  
15 (PUSRAP (Doc. 2632-1) at 2 § II.A.1.) This is precisely what the District did. There were  
16 no objections filed to the DAR by either Plaintiffs.

17 Admittedly, the District failed to send the Updated AASSD and MASSD  
18 Operating Plans to the Governing Board, but it complied fully with the directive upon  
19 which this Court’s approval of the original operating plans was contingent—it updated  
20 them in SY 2020-21. And, it exercised this compliance during a year of historic upheaval  
21 from the COVID-19 pandemic. The Court is not surprised by the Superintendent’s  
22 confusion about what issues were presented to the Governing Board in September, when  
23 his intended presentation of the AASSD and MASSD Operating Plans was bumped  
24 because of pressing emergency matters. “At that time, the District was in the midst of the  
25 throes of trying to resume in-person instruction, deciding whether or not the governor’s  
26

27 \_\_\_\_\_  
28 <sup>4</sup> This is the local for such postings, but it is unknown whether the postings were  
made when the operating plans were updated or more recently.

1 orders regarding masks were enforceable and determining what policy to adopt, and  
2 dealing with the many other issues caused by the pandemic.” (Reply (Doc. 2632) at 18.)

3 It is the Court’s opinion that the District’s handling of the required 2020-21  
4 Updated AASSD and MASSD Operating Plans is a good example of the good faith it has  
5 exhibited related to the last pending USP provision: Section X, Accountability and  
6 Transparency.

7 **CONCLUSION**

8 Pursuant to the Findings of Fact and Conclusions of Law issued by this Court  
9 (Doc. 2572), incorporated herein, the Court finds that the District has acted in good faith  
10 to attain unitary status, pursuant to all parts of the USP, to the extent practicable. Pending  
11 the District’s completion of the revisions ordered herein, including the PIA revisions, the  
12 Court shall enter Judgment and close this case.

13 **Accordingly,**

14 **IT IS ORDERED** that pending the revisions being made to the Post Unitary  
15 Status Reporting and Accountability Plan (PUSRAP), including the Performance Impact  
16 Analysis (PIA), the Court adopts it.

17 **IT IS FURTHER ORDERED** that pending these revisions, the District shall attain  
18 unitary status for § X of the USP, and by incorporation of the Findings of Fact and  
19 Conclusions of Law (Doc. 2572), accordingly, the District shall attain unitary status in its  
20 entirety.

21 **IT IS FURTHER ORDERED** that the District shall revise the PUSRAP,  
22 including the PIA to track the DIA both for its standard of review and its format, submit  
23 the Impact Analysis section to the IC for review and comment, and make any revisions  
24 responsive to comments from the IC before presenting both the PIA and the IC comments  
25 to the Court for approval.

26 **IT IS FURTHER ORDERED** that within 21 days of the filing date of this Order  
27 the District shall file the revised PUSRAP, including the PIA and any comments from the  
28 IC. The Plaintiffs shall have 14 days to file Responses. There shall be no Reply.

1           **IT IS FURTHER ORDERED** that the District shall file Notices of Compliance no  
2 later than June 2022, as follows:

- 3           1. Complete and post budget form revisions responsive to the recently adopted  
4           Budget Expert's Budget Principles;
- 5           2. Complete and post the budget form narratives, inclusive of any budget form  
6           revisions referenced above;
- 7           3. Post the Executive Summary;
- 8           4. Complete and post the Executive Summary Update, and
- 9           5. Post the Final PUSRAP, inclusive of all revisions and supporting documents as  
10          revised.

11           **IT IS FURTHER ORDERED** that within 7 days of the filing date of this Order,  
12 the District shall provide a copy of this Order to the Implementation Committee (IC)  
13 members and Governing Board members.

14           Dated this 6th day of April, 2022.

15  
16  
17  
18  


---

Honorable David C. Bury  
United States District Judge